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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,765	12/28/2000	Mitchell R. Swartz		8044

7590

04/17/2002

Mitchell R. Swartz, ScD, EE, MD
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EXAMINER

BEHREND, HARVEY E

ART UNIT

PAPER NUMBER

3641

DATE MAILED: 04/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

EXHIBIT "A"

Application/Control Number: 09/750,765

Page 4

Art Unit: 3641

above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).**

Any inquiry concerning this communication should be directed to Mr. Behrend at telephone number (703) 305-1831.

Behrend/cw
September 14, 2001

HARVEY E. BEHREND
PRIMARY EXAMINER



The date stamp of the United States Patent Office
on this postcard will indicate receipt of:

- 1: Applicant's "Response To Unsigned Comm. #2", and
- 2: "Motion To Recuse Mr. Harvey Behrend",
- 3: "Declaration Of Dr. Swartz Supporting Petition", and
- 4: This self-addressed stamped postcard.

Serial no. 09/ 750,765 Filed: 12/28/00

Thank you.

Mailed: June 14, 2001 Mitchell Swartz



Exhibit "B"



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE THE APPLICATION OF:

Inventor : Mitchell R. Swartz

Serial no. 09/ 750,765

Filed: 12/28/00

For: **METHOD AND APPARATUS
TO CONTROL ISOTOPIC FUEL
LOADED WITHIN A MATERIAL**

This is a continuation of Serial no. 07/ 760,970

Filed: 09/17/1991

PAPER:

Group Art Unit: 3641

Examiner: Mr. H. Behrend

EXHIBIT "C"

June 14, 2001

MOTION TO RECUSE MR. HARVEY BEHREND

1. This Motion is filed to recuse Mr. Harvey Behrend from participating directly or indirectly in Applicant's patent application. This motion is reasonable both because of his systematic incorrect statements even after he has been corrected, his failure to abide by the record, his egregious repeated attempts to force double-patenting, his most recent attempt to create false matters and issues, and his profound bias and prejudice toward certain inventors, to some of whom the Applicant's invention may have an interest.

With respect to the above-entitled, and other of Applicant's applications, there has been no serious or responsive compliance by Mr. Harvey Behrend either with the record of this Office, the past Decision of the Board, or the past Decision by the Federal Court, or with the Rules and Guidelines under which Mr. Harvey Behrend presumably operates.

2. Mr. Behrend has "taken" all of Applicant's applications in what appears to be retaliation for a Federal lawsuit the applicant lodged against the Commissioner of Patents. This systematic behavior creates an appearance of unfairness by the Office, because in the above-entitled action, and at least three others of Applicant's applications, taken by Mr. Behrend, he has demonstrated a show-no-care for the record, rules, or guidelines. He has at great cost, effort, and time to me -- shown to be wrong about the facts repeatedly.

3. Mr. Behrend, in several of his communications (infra), appears to be coercing the Applicant into double patenting for reasons not presently clear. He does this while ignoring both the record and the invention described by the application and claims in question.

A. In "Systems To Monitor And Accelerate Fusion Reactions In A Material Using Electric And Magnetic Fields" [Serial no. 09/568,728, Filed: 05/11/2000; a division of Serial no. 07/371,937, Filed: 06/27/89], Mr. Behrens in his Communication #4, mailed 10/11/01, attempted to force the Applicant to double patent, by his unsupported demand for a new second "first-restriction". Said attempt was neither necessary nor proper in light of the original application because the original application was restricted already. The Primary Examiner Daniel Wasil separated 07/371,937 into three inventions [September 16, 1991]. For the convenience of Mr. Behrend, a copy of this relevant first restriction by Examiner Wasil was sent to Mr. Behrend, but thereafter has apparently ignored it.

B. In "Method And Apparatus To Integrate Reactors Involving Reactions Within A Material" [Serial no. 09/573,381, Filed: 05/19/2000, a division of Serial no. 07/760,970, Filed: 09/17/1991], Mr. Behrend in his Communication #5, mailed 2/12/01, attempted to force the Applicant to double patent by his unsupported demand for a new second "first-restriction". Said attempt was neither necessary nor proper in light of the original application because the original application was restricted already. The original specification, claims and drawings of Serial no. 07/760,970 have already gone through a restriction by the Primary Examiner Daniel Wasil on June 8, 1992. Mr. Wasil separated 07/760,970 into five inventions. For the convenience of Mr. Behrend, a copy of this relevant first restriction by Examiner Wasil was sent to Mr. Behrend, but thereafter has apparently ignored it.

C. In "Method And Apparatus To Monitor Loading Using Vibration" [Serial no. 09/750,480, Filed: 12/28/00; continuation of Serial no. 07/371,937, Filed: 06/27/89], Mr. Behrens in his Communication #5, mailed 2/12/01 has attempted to force the Applicant to double patent. Mr. Behrend's request for a new second "first-restriction" was neither necessary nor proper for several reasons. Attention is directed to the fact that the original specification, claims and drawings of Serial no. 07/371,937 already went through a restriction by the Primary Examiner Daniel Wasil on September 16, 1991. This is relevant because this application is a continuation of Serial no. 07/371,937 which was restricted by Primary Examiner Daniel Wasil, delivered after his careful study of the original specification and claims. Mr. Wasil separated 07/371,937 into three inventions. For the convenience of Mr. Behrend, a copy of this relevant first restriction by Examiner Wasil was sent to Mr. Behrend, but thereafter has apparently ignored it.

D. In "Method And Apparatus To Control Isotopic Fuel Loaded Within A Material" [Serial no. 09/ 750,765, Filed: 12/28/00; a continuation of Serial no. 07/ 760,970. Filed: 09/17/1991], Mr. Behrend in his Communication #2, mailed 5/7/01 has attempted to force the Applicant to double patent. Mr. Behrend's request for a new second "first-restriction" was neither necessary nor proper for several reasons. The original specification, claims and drawings of Serial no. 07/760,970 have already gone through a restriction by the Primary Examiner Daniel Wasil on June 8, 1992. Mr. Wasil separated 07/760,970 into five inventions. For the convenience of Mr. Behrend, a copy of this relevant first restriction by Examiner Wasil was sent to Mr. Behrend, but thereafter has apparently ignored it.

4. Mr. Behrend's demand for a second "first-restriction" is neither necessary nor proper in light of MPEP §803 because given Examiner Wasil's previous restriction, there cannot be any serious burden for Mr. Behrend to examine this case on the merits. No burden has been shown because there was already a restriction in 1992 by Examiner Wasil after his very careful examination of the record. Mr. Behrend was Obligated by MPEP §803.1 and Examiner Wasil's previous restriction, to avoid any improper conflicting analysis, which is also against the public interest. Mr. Behrend was Obligated NOT to coerce the Applicant into double patenting.

5. Mr. Behrend's demand for a second "first-restriction" is in violation the Office's Guidelines because given Examiner Wasil's previous restriction, Mr. Behrend was Obligated to "provide reasons and/or examples to support (his new) conclusions" but did not. Nor did Mr. Behrend give any reason to dispose of Mr. Wasil's reasoning, or the record which was before the Federal Appellate Court (Federal Circuit 00-1108).

6. Mr. Behrend is Obligated to be consistent with the pleadings in the Office including past unrebutted Declarations [*In re Gazave*, 379 F.2d 973, 978, 154 USPQ 92, 96 (CCPA 1967); *In re Chilowsky*, 229 F.2d 457, 462, 108 USPQ 321, 325 (CCPA 1956); *In re Jolles*, 628 F.2d 1322, 206 USPQ 885 (CCPA 1980)] but has not. Against the public good, Mr. Behrend although Obligated to deal with the application and claims, has attempted to lead away from the invention, consistent with his systematic attempts to coerce the applicant into improper actions involving double-patenting.

7. Mr. Behrend in several of his communications has totally ignored the record and the application in question.

A. In "Systems To Monitor And Accelerate Fusion Reactions In A Material Using Electric And Magnetic Fields" [Serial no. 09/568,728, Filed: 05/11/2000; a division of Serial no. 07/ 371,937, Filed: 06/27/89], Mr. Behrend's in his Communication #4, mailed 10/11/01, ignored the record by claiming a figure was in the patent --when it was not. There were four (4) figures with the application and four (4) figures described therein.

B. In "Method And Apparatus To Control Isotopic Fuel Loaded Within A Material" [Serial no. 09/ 750,765, Filed: 12/28/00; a continuation of Serial no. 07/ 760,970. Filed: 09/17/1991], Mr. Behrend's request for election of "thermal conducting means listed as choices "V" through "Z" is not proper. The description by the Mr. Behrend is indefinite and illogical. Nowhere was it stated that a thermocouple was used to thermally conduct heat because under ordinary circumstances that amount would be trivial. Mr. Behrend is deliberately confusing the issue and the case, or is confused himself.

8. Although Examiner Wasil did personally sign the documents when the first restrictions were made, by contrast Mr. Behrend does not personally sign the documents in which his improper demands for double patenting. This omission by Mr. Behrend is yet another violation of 803.01.

"Since requirements for restriction under Title 35 U.S.C. 121 are discretionary with the Commissioner, it becomes very important that the practice under this section be carefully administered. Notwithstanding the fact that this section of the statute apparently protects the applicant against the dangers that previously might have resulted from compliance with an improper requirement for restriction, it still remains important from the standpoint of the public interest that no requirements be made which might result in the issuance of two patents for the same invention. Therefore, to guard against this possibility, the primary examiner must personally review and sign all final requirements for restriction."

[803.01, Review by Primary Examiner]

A. In "Method And Apparatus To Monitor Loading Using Vibration" [Serial no. 09/ 750, 480, Filed: 12/28/00; continuation of Serial no. 07/ 371,937, Filed: 06/27/89], Mr. Behrend in his Communication #2, with such restriction did not sign the document.

B. In "Method And Apparatus To Control Isotopic Fuel Loaded Within A Material" [Serial no. 09/ 750,765, Filed: 12/28/00; a continuation of Serial no. 07/ 760,970. Filed: 09/17/1991], Mr. Behrend in his Communication #2, with such restriction did not sign the document.

9. Mr. Behrend has ignored each and every of Applicant's requests for constructive assistance and suggestions in drafting one or more acceptable claims [pursuant to MPEP 707.07(j)] and in making constructive suggestions [pursuant to MPEP 706.03(d)]. All have been ignored.

10. Mr. Behrend is a legend on the Internet and a copy of one posting is included (Exhibits A, B, C). Mr. Behrend is the subject of many articles in the field which imply that Mr. Behrend is not impartial to this field. And since he has not been able to maintain his objectivity, he should not be allowed to participate in further administering his proverbial throttling of patent applications in this field by his continuous and illogical attacks.

11. Despite clear and definitive work in these matters by Mr. Daniel Wasil and others, Mr. Behrend is determined to concoct things, including issues and matters which have been settled by the Federal Appeals Court after great cost and effort. Despite orders from the Court on how to handle this, Mr. Behrend, with his now continuous attempt to ignore both the record and responsibility, has elected more than an appearance of impropriety.

12. Mr. Behrend, by his continuing behavior, shown to be at odds with law and Guidelines, has thus deviated from the Code of Federal Regulations at Title 37, The Patent And Trademark Office Code Of Professional Responsibility by his systematic ignoring of the record:

10.22 MAINTAINING INTEGRITY AND COMPETENCE OF THE LEGAL PROFESSION.

(a) A practitioner is subject to discipline if the practitioner has made a materially false statement in, or if the practitioner has deliberately failed to disclose a material fact requested in connection with, the practitioner's application for registration or membership in the bar of any United States court or any State court or his or her authority to otherwise practice before the Office in trademark and other non-patent cases.

[Added 50 FR 5175, Feb. 6, 1985, effective Mar. 8, 1985]

13. Mr. Behrend's actions, by systematically ignoring the record, are violations of Canon 9 10.110 which states:

"10.110 Canon 9. A practitioner should avoid even the appearance of professional impropriety. [Added 50 FR 5181, Feb. 6, 1985, effective Mar. 8, 1985]

14. If a Commissioner has an iota of commitment to fairness, or honesty, or seriousness. this continued behavior on the part of even one of his employees, this deviation from law and practice, will cease and desist. If it continues after this notice, it will be another egregious, capricious, misconduct after formal notification, and now notification of the new Commissioner.

10.23 Misconduct.

(a) A practitioner shall not engage in disreputable or gross misconduct.

(b) A practitioner shall not:

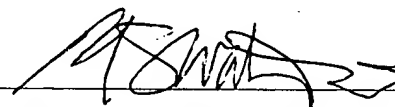
(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

15. The Applicant of the above-entitled application continues to preserve all rights granted by the U.S. Constitution and legislated by the U.S. Congress to continue the prosecution of the above-entitled application.

June 13, 2001

Inventor:



Mitchell R. Swartz

Post Office Box 81135

Wellesley Hills, Mass. 02481



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE THE APPLICATION OF:

Inventor : Mitchell R. Swartz

Serial no. 09/ 750,765

Filed: 12/28/00

For: **METHOD AND APPARATUS
TO CONTROL ISOTOPIC FUEL
LOADED WITHIN A MATERIAL**

This is a continuation of Serial no. 07/ 760,970

Filed: 09/17/1991

PAPER:

Group Art Unit: 3641

Examiner: Mr. H. Behrend

EXHIBIT "D"

June 14, 2001

DECLARATION OF DR. MITCHELL SWARTZ SUPPORTING PETITION

I, Mitchell R. Swartz, declare that I am a citizen of the United States of America and the inventor of the invention described in the above-entitled application.

1. With respect to the above-entitled and other of Applicant's applications, there does not appear to have been serious or substantive compliance by Mr. Harvey Behrend either with the record of the Office, with the past Decision of the Board, with the past Decision by the Federal Court, or with the Rules and Guidelines under which Mr. Harvey Behrend presumably operates.

2. Mr. Behrend has "taken" all my applications in what appears to be retaliation for a Federal lawsuit.

3. In the above-entitled action, and in at least three other of my applications, which have been "taken" by Mr. Behrend, he has demonstrated a show-no-care attitude for the record, rules, and guidelines. He has at great cost, effort, and time to me shown repeatedly to be wrong about the facts.

4. Mr. Behrend, in several of his communications (infra), appears to be coercing me into double patenting for reasons not presently clear. He does this while ignoring both the record and the invention described by the application and claims in question.

A. In Serial no. 09/568,728, Filed: 05/11/2000 [a division of Serial no. 07/371,937, Filed: 06/27/89], Mr. Behrend in his Communication #4, mailed 10/11/01, attempted to force me to double patent, by his unsupported demand for a new second "first-restriction". Said attempt was neither necessary nor proper in light of the original application because the original application was restricted already. The Primary Examiner Daniel Wasil separated 07/371,937 into three inventions [September 16, 1991]. For the convenience of Mr. Behrend, a copy of this relevant first restriction by Examiner Wasil was sent to Mr. Behrend but he, thereafter, has apparently ignored it.

B. In Serial no. 09/573,381, Filed: 05/19/2000 [a division of Serial no. 07/760,970, Filed: 09/17/1991], Mr. Behrend in his Communication #5, mailed 2/12/01, attempted to force me to double patent by his unsupported demand for a new second "first-restriction". Said attempt was neither necessary nor proper in light of the original application because the original application was restricted already. The original specification, claims and drawings of Serial no. 07/760,970 have already gone through a restriction by the Primary Examiner Daniel Wasil on June 8, 1992. Mr. Wasil separated 07/760,970 into five inventions. For the convenience of Mr. Behrend, a copy of this relevant first restriction by Examiner Wasil was sent to Mr. Behrend but he, thereafter, has apparently ignored it.

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D. In Serial no. 09/750,765, Filed: 12/28/00 [a continuation of Serial no. 07/760,970, Filed: 09/17/1991], Mr. Behrend in his Communication #2, mailed 5/7/01 has attempted to force me to double patent. Mr. Behrend's request for a new second "first-restriction" was neither necessary nor proper for several reasons. The original specification, claims and drawings of Serial no. 07/760,970 have already gone through a restriction by the Primary Examiner Daniel Wasil on June 8, 1992. Mr. Wasil separated 07/760,970 into five inventions. For the convenience of Mr.

Behrend, a copy of this relevant first restriction by Examiner Wasil was sent to Mr. Behrend but he, thereafter, has apparently ignored it.

5. Mr. Behrend appears to have attempted to lead away from the invention, consistent with his systematic attempts to coerce me into improper actions involving double-patenting.

6. Mr. Behrend in several of his communications has totally ignored the record and the application in question.

A. In Serial no. 09/568,728, Filed: 05/11/2000 [a division of Serial no. 07/ 371,937, Filed: 06/27/89], Mr. Behrend's in his Communication #4, mailed 10/11/01, ignored the record by claiming a figure was in the patent --when it was not. There were four (4) figures with the application and four (4) figures described therein.

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7. Although Examiner Wasil personally signed the documents when the first restrictions were made, by contrast Mr. Behrend did not personally sign some of the documents in which his improper demands for double patenting were made.

A. In Serial no. 09/ 750, 480, Filed: 12/28/00 [a continuation of Serial no. 07/ 371,937, Filed: 06/27/89], Mr. Behrend in his Communication #2, with such restriction did not sign the document.

B. In Serial no. 09/ 750,765, Filed: 12/28/00 [a continuation of Serial no. 07/ 760,970, Filed: 09/17/1991], Mr. Behrend in his Communication #2, with such restriction did not sign the document.

8. By contrast to this continuing record, Mr. Behrend appears to have ignored each and every of Applicant's requests for constructive assistance and suggestions in drafting one or more acceptable claims [pursuant to MPEP 707.07(j)] and in making constructive suggestions [pursuant to MPEP 706.03(d)].

I declare that all statements herein of my own knowledge are true and that all statements made on information and belief are believed to be true.

Signature of Inventor:



June 14, 2001

Mitchell R. Swartz, ScD, EE, MD
16 Pembroke Road
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